IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 20453 of 2007(I)

AGAINST THE IN EP.85/07 IN F.D.I.A.1084/97 IN OS.26/1996 of MUNSIFF COURT, HOSDRUG
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PETITIONER:

NITHIRATHIL MONICAMMA, AGED 64 YEARS, W/O.LATE NITHIRATHIL KORA, RESIDING AT AVULLAKODE IN PARAPPA VILLAGE, HOSDURG TALUK, AND KASARAGOD DISTRICT.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA

RESPONDENTS:
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1. BABY NITHIRATHIL, AGED 35 YEARS, S/O.LATE NITHIRATHIL KORA, RESIDING AT AVULLAKODE IN PARAPPA VILLAGE, HOSDURG TALUK AND KASARAGOD DISTRICT.

2. SHERLI NITHIRATHIL, AGED 37 YEARS, D/O.LATE NITHIRATHIL KORA, W/O.BALAN, RESIDING AT PRANTHARKAVU, IN PANATHODY VILLAGE, HOSDURG TALUK AND KASARAGOD DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 20453 OF 2007

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Dated this the 4th day of July, 2007.

J U D G M E N T

This writ petition is filed to set aside Ext.P3 and in the alternative to pass appropriate orders regarding the construction of RCC built house. The execution petition is filed for delivery of plot 'C' passed in a final decree proceedings between the parties. There was another E.P. pending between the parties with respect to plots A and B and that has been settled in the Adalat. Now, what remains is with respect to plot 'C'. Now, the writ petitioner wants this Court to direct the executing Court to pass an order regarding the construction of houses which is situated in plot B and plot C. I am afraid this Court is not competent to do the same at this stage. A competent civil Court has passed a final decree whereby plot 'C' is set apart to the share of a person who has applied for delivery. When a property is set apart it takes in all what is contained therein. So the executing Court is not competent to go beyond the scope of the decree and it cannot enter into further finding to resolve the dispute between the same parties which had arisen subsequently. Therefore, under this

jurisdiction this Court is not inclined to entertain that and hence the same is dismissed.

If the writ petitioner has got other remedies as per law he is permitted to pursue.

M.N. KRISHNAN, JUDGE.

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